

By: Chapman

S.J.R. No. 35

SENATE
A JOINT RESOLUTION

1 proposing a constitutional amendment to permit spouses to hold
2 community property with right of survivorship.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Article XVI, Section 15, of the Texas
5 Constitution is amended to read as follows:

6 Sec. 15. All property, both real and personal, of a spouse
7 owned or claimed before marriage, and that acquired afterward by
8 gift, devise or descent, shall be the separate property of that
9 spouse; and laws shall be passed more clearly defining the rights
10 of the spouses, in relation to separate and community property;
11 provided that persons about to marry and spouses, without the
12 intention to defraud pre-existing creditors, may by written
13 instrument from time to time partition between themselves all or
14 part of their property, then existing or to be acquired, or
15 exchange between themselves the community interest of one spouse or
16 future spouse in any property for the community interest of the
17 other spouse or future spouse in other community property then
18 existing or to be acquired, whereupon the portion or interest set
19 aside to each spouse shall be and constitute a part of the separate
20 property and estate of such spouse or future spouse; [~~and--the~~]
21 spouses also may from time to time, by written instrument, agree
22 between themselves that the income or property from all or part of
23 the separate property then owned [~~by--one--of--them;~~] or which
24 thereafter might be acquired by only one of them, shall be the ¹/₂

4/21/87
5/28/87

S.J.R. No. 35

1 separate property of that spouse; [and] if one spouse makes a gift
2 of property to the other that gift is presumed to include all the
3 income or property which might arise from that gift of property;
4 and spouses may agree in writing that all or part of their
5 community property becomes the property of the surviving spouse on
6 the death of a spouse.

7 SECTION 2. This proposed constitutional amendment shall be
8 submitted to the voters at an election to be held on November 3,
9 1987. The ballot shall be printed to provide for voting for or
10 against the proposition: "The constitutional amendment permitting
11 spouses to hold community property with right of survivorship."

By: Caperton S.J.R. No. 35
(In the Senate - Filed March 11, 1987; March 12, 1987, read first time and referred to Committee on Jurisprudence; March 25, 1987, reported favorably by the following vote: Yeas 4, Nays 0; March 25, 1987, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
Caperton	x			
Brown				x
Anderson	x			
Green				x
Krier	x			
Parker				x
Tejeda	x			

SENATE JOINT RESOLUTION

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BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment permitting spouses to hold community property with right of survivorship."

* * * * *

Austin, Texas
March 25, 1987

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on Jurisprudence to which was referred S.J.R. No. 35, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

Caperton, Chairman

SENATE FAVORABLE COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

^{2.5}
MARCH 24, 1987
(date)/(time) 2:30pm

Sir:

We, your Committee on JURISPRUDENCE to which was referred
SJR 35 by CAPERTON have on MARCH 24, 1987, had the same
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

☒ do pass and be printed

☐ do pass and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

Senate Sponsor of House Measure _____

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
Caperton, Chairman	<input checked="" type="checkbox"/>			
Brown, Vice Chairman				<input checked="" type="checkbox"/>
Anderson	<input checked="" type="checkbox"/>			
Green				<input checked="" type="checkbox"/>
Krier	<input checked="" type="checkbox"/>			
Parker				<input checked="" type="checkbox"/>
Tejeda	<input checked="" type="checkbox"/>			
TOTAL VOTES	<u>4</u>	<u>0</u>	<u>0</u>	<u>3</u>

Regina S. Martin
COMMITTEE CLERK

Karl Caperton
CHAIRMAN

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 23, 1987

TO: Honorable Kent A. Caperton, Chairman
Committee on Jurisprudence
Senate Chamber
Austin, Texas

In Re: Senate Joint Resolution
No. 35
By: Caperton

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 35 (proposing a constitutional amendment to permit spouses to hold community property with right of survivorship) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would allow spouses to agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No fiscal implication to units of local government is anticipated.

Source: Secretary of State
LBB Staff: JO, HES, JWH, AL, PA

April 21, 1987 Engraved
Lacey Daw
Engraving Clerk

I certify that the attached is a true and correct
copy of SJR 35, which was
received from the Senate on APR 22 1987 and
referred to the Committee on Judiciary

Betty Green
Chief Clerk of the House

By: Caperton

S.J.R. No. 35

(Perez)

SENATE JOINT RESOLUTION

proposing a constitutional amendment to permit spouses to hold
community property with right of survivorship.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article XVI, Section 15, of the Texas
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owned or claimed before marriage, and that acquired afterward by
gift, devise or descent, shall be the separate property of that
spouse; and laws shall be passed more clearly defining the rights
of the spouses, in relation to separate and community property;
provided that persons about to marry and spouses, without the
intention to defraud pre-existing creditors, may by written
instrument from time to time partition between themselves all or
part of their property, then existing or to be acquired, or
exchange between themselves the community interest of one spouse or
future spouse in any property for the community interest of the
other spouse or future spouse in other community property then
existing or to be acquired, whereupon the portion or interest set
aside to each spouse shall be and constitute a part of the separate
property and estate of such spouse or future spouse; ~~[and--the]~~
spouses also may from time to time, by written instrument, agree
between themselves that the income or property from all or part of
the separate property then owned ~~[by--one--of--them,]~~ or which
thereafter might be acquired by only one of them, shall be the

1 separate property of that spouse; [~~and~~] if one spouse makes a gift
2 of property to the other that gift is presumed to include all the
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9 1987. The ballot shall be printed to provide for voting for or
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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 23, 13587

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Senate Chamber
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No fiscal implication to units of local government is anticipated.

Source: Secretary of State
LBB Staff: JO, HES, JWH, AL, PA

HOUSE COMMITTEE REPORT

1997 APR 29 PM 7:04
HOUSE OF REPRESENTATIVES

1st Printing

By: Caperton

S.J.R. No. 35

(Perez)

SENATE JOINT RESOLUTION

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1 separate property of that spouse; [and] if one spouse makes a gift
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4-27-87

(date)

COMMITTEE COORDINATOR

By: Caperton

Resolution Analysis

Background Information

From 1840 to 1965, married couples could own community property with the right of survivorship in the state of Texas. However, since 1965, Texas courts have persistently denied married couples an easy means of holding their property with right of survivorship. Although it has long been relatively easy to create a right of survivorship in separate property, many banks and savings and loans associations have often failed to provide forms by which their customers can create effective joint tenancies out of community property. Many Texas spouses hold a substantial amount of assets in a form that is ineffective to achieve their desired purpose. Each of these accounts or transactions represents a potential lawsuit that may result in frustrating the intent of the spouses.

A simple means should be made available by which both spouses by a written instrument can provide that the survivor of them may be entitled to all or any designated portion of their community property without the necessity of making a will for that purpose.

Purpose

This proposed constitutional amendment will allow the people to provide that a Texas couple may hold community property with a right of survivorship in the surviving spouse. This simple approach will obviate the need for creating a joint tenancy with a right of survivorship - a form of separate property ownership between spouses that is now used for this purpose. The accompanying legislation is SB 893.

Section by Section Analysis

SECTION 1. Amends Article XVI, Section 15, Texas Constitution, allowing spouses to agree in writing that community property becomes the property of the surviving spouse on the death of a spouse.

SECTION 2. Requires the proposed constitutional amendment to be referred to voters in the November 3, 1987 election.

Rulemaking Authority

This resolution does not delegate rulemaking authority to any state agency, department, institution, or officer.

Summary of Committee Action

Public notice was posted on April 22, 1987 at 2:30 p.m. and a public hearing was held on April 27, 1987.

No witnesses testified on, for, or against SJR 35.

The Committee voted to report SJR 35 favorably to the House with the recommendation that it do pass by a record vote of 5 ayes, 1 nay, 0 PNV, and 3 absent.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 27, 1987

TO: Honorable Mike Toomey, Chair
Committee on Judiciary
House of Representatives
Austin, Texas

In Re: Senate Joint Resolution
No. 35, as engrossed
By: Caperton

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 35, as engrossed (proposing a constitutional amendment to permit spouses to hold community property with right of survivorship) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would allow spouses to agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No fiscal implication to units of local government is anticipated.

Source: Secretary of State
LBB Staff: JO, HES, JWH, AL, PA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 23, 13587

TO: Honorable Kent A. Caperton, Chairman
Committee on Jurisprudence
Senate Chamber
Austin, Texas

In Re: Senate Joint Resolution
No. 35
By: Caperton

FROM: Jim Oliver, Director

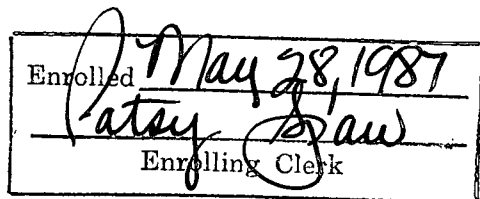
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10 against the proposition: "The constitutional amendment permitting
11 spouses to hold community property with right of survivorship."

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 35 was adopted by the Senate
on April 21, 1987, by the following vote: Yeas 28, Nays 2.

Secretary of the Senate

I hereby certify that S.J.R. No. 35 was adopted by the House
on May 27, 1987, by the following vote: Yeas 135, Nays 0, two
present not voting.

Chief Clerk of the House

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 27, 1987

TO: Honorable Mike Toomey, Chair
Committee on Judiciary
House of Representatives
Austin, Texas

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No. 35, as engrossed
By: Caperton

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LBB Staff: JO, HES, JWH, AL, PA

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Source: Secretary of State
LBB Staff: JO, HES, JWH, AL, PA

S.J.R. No. 35

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 35 (1) was adopted by the
Senate on April 21 (2), 1987, by the following vote:
Yeas 28 (3), Nays 2 (4).

Secretary of the Senate

I hereby certify that S.J.R. No. 35 (1) was adopted by the
House on May 27 (5), 1987, by the following vote:
Yeas 135 (6), Nays 0 (7), two present not voting.

Chief Clerk of the House

SENATE JOINT RESOLUTION

proposing a constitutional amendment to permit spouses to hold community property with right of survivorship.

3-11-87

Filed with the Secretary of the Senate

MAR 12 1987Read and referred to Committee on JURISPRUDENCEMAR 25 1987

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

APR 21 1987

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent{ 27 yeas, 2 naysAPR 21 1987

Read second time, _____, and ordered engrossed by:

{ unanimous consent
a viva voce vote

{ _____ yeas, _____ nays

Caption ordered amended to conform to the body of the bill.

APR 21 1987Senate and Constitutional 3 Day Rule suspended by a vote of 27 yeas, 3 nays.APR 21 1987Read third time, _____, and passed by 28 yeas, 2 nays.

Betty King

SECRETARY OF THE SENATE

OTHER ACTION:

April 21, 1987

Engrossed

APR 22 1987

Sent to House

Latsy Law

Engrossing Clerk

APR 22 1987

Received from the Senate

APR 23 1987Read first time and referred to Committee on Judiciary4-27-87Reported favorably amended, sent to Printer 3:50 p.m.APR 29 1987APR 29 1987Printed and Distributed 7:04 p.m.APR 30 1987Sent to Committee on Calendars 8:39 a.m.MAY 27 1987Read second time (amended) and finally adopted
~~failed adoption~~ by Record Vote of 135 yeas, 0 nays, 2 present not voting.Read third time (amended) and finally adopted
~~failed adoption~~ by a Record Vote of _____ yeas, _____ nays, _____ present not voting.

Caption ordered amended to conform to body of resolution

5-28-87

Returned to Senate.

Betty Murray

CHIEF CLERK OF THE HOUSE

MAY 28 1987

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, and _____.

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

1997 APR 29 PM 7:04

HOUSE OF REPRESENTATIVES